

**UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**

CC-1 LIMITED PARTNERSHIP D/B/A
COCA COLA PUERTO RICO
BOTTLERS

Respondent Employer

And

CARLOS RIVERA, et als.
Charging Parties

And

UNION DE TRONQUISTAS DE
PUERTO RICO, LOCAL 901,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

Respondent Union

And

CARLOS RIVERA et als.
Charging Parties

And

MIGDALIA MAGRIZ, et als.
Charging Parties

Cases No.
24-CA-11018, et al.

Cases No.
24-CB-2648, et al.

Cases No.
24 CB-2706, et al.

**EXCEPTIONS ON BEHALF OF RESPONDENT CC-1 LIMITED PARTNERSHIP
D/B/A COCA-COLA PUERTO RICO BOTTLERS**

TO THE HONORABLE NATIONAL LABOR RELATIONS BOARD:

COMES NOW, **CC1 LIMITED PARTNERSHIP D/B/A COCA-COLA PUERTO RICO BOTTLERS**, hereinafter referred to as "CCPRB", through the undersigned attorneys, and pursuant to §102.46 of the National Labor Relations Board's Rules and Regulations, 29 C.F.R. §102.46 (2009), herein file these exceptions to the Administrative Law Judge's Decision (ALJD), dated April, 16, 2010.

CCPRB's exceptions are as follows:

1. ALJD p. 14., ln. 3-6 The ALJ erred in finding that Shop Steward Miguel Colón did not enter CCPRB's facility unlawfully on the night of September 9 and did not encourage any bargaining unit employees to abandon their work stations. The evidence on the record shows that Miguel Colón assisted the other four Shop Stewards in encouraging employees to abandon their work areas. (Tr. 883, ln. 20-25 Armando Troche)
2. ALJD p.14, ln. 6-8 The ALJ erred by rejecting the testimony proffered by Armando Troche that Shop Steward Miguel Colón stated to employees to stop work, and noting that the witness did not make that statement in his pre-trial affidavit. A careful examination of paragraphs 10 and 12 of Troche's pre-trial affidavit reveals that Troche did mention that Shop Steward Miguel Colón joined the other Shop Stewards in taking the employees out of their work areas. (G.C. Exh. 14)
3. ALJD p. 14, ln. 14-17 The ALJ erred by concluding that the Employer conducted a superficial investigation as it concerned Shop Steward Miguel Colón and manufactured evidence in its desire to lump together the actions of the four other Shop Stewards with those of Colón. Said conclusion is not supported by the evidence on the record. (Tr. 883, ln. 13-25 Armando Troche)

4. ALJD p. 14, ln 26-28 The ALJ erred by finding that Section 8(a)(1) and (3) of the Act was violated when CCPRB suspended Shop Steward Colón on September 10, and thereafter terminated him on October 10. The record shows that Shop Steward Miguel Colón violated the terms of the collective bargaining agreement and the Employer's Rules of Conduct. (Entire Transcript)
5. ALJD p. 14, ln. 26-28 The ALJ erred by finding that CCPRB should have treated Shop Steward Miguel Colón similarly to all other bargaining unit employees who ceased work on September 9, but were not disciplined by the Employer. The record demonstrates that, although Miguel Colón was the last Shop Steward to arrive at the plant on September 9, he immediately joined and assisted the other Shop Stewards in taking employees out of their work areas. (Tr. 883, ln. 20-25 Armando Troche)
6. ALJD p. 14, ln. 28-29 The ALJ erred by finding that Miguel Colón engaged in protected concerted activities. The record shows that Shop Steward Miguel Colón violated the terms of the collective bargaining agreement and the Employer's Rules of Conduct. (Entire Transcript)
7. ALJD p. 15, ln. 31-36 The ALJ erred in finding that, on September 15, 130-160 employees authorized a strike to protest the

suspension of the five Shop Stewards. The evidence on the record clearly demonstrates that a strike vote would not be authorized for that sole reason. A strike vote would only be authorized if CCPRB did not agree to one of three issues discussed in said assembly. (Tr. 136, ln. 19-25; Tr. 137, ln. 1 José Adrián López; Tr. 248, ln. 22-25; Tr. 249, ln. 1-4 Miguel Colón).

8. ALJD p. 15, ln. 42

The ALJ failed to find that the Union's request for strike funds expressly stated that the nature of the difficulty for engaging in a strike was a stalemate in the negotiation of the economic articles of the successor CBA. The petition did not mention the suspension of the five Shop Stewards. (CP-24-CB-2706 Exhibit 1).

9. ALJD p. 15, ln. 45

The ALJ failed to find that the slate supported by José Adrián López and CCPRB employees lost the internal union election held on October 3. (RU Exh. 6; GC Exh. 34, par. 22)

10. ALJD p. 16, ln. 1-5

The ALJ erred by finding that on October 9, pursuant to requests by a number of employees to have another assembly, the Shop Stewards distributed a flyer announcing a meeting for October 12, to further discuss the three points to be presented to the Employer. The fact that the assembly was called upon

the request of the employees is derived from the self-serving testimony of the sole Shop Steward to testify, inasmuch as no bargaining unit employees testified in this respect. (Entire Transcript)

11. ALJD p. 16, ln. 5 The ALJ failed to find that the October 12 assembly, called by the five Shop Stewards, was scheduled for October 12 intentionally so it would be in direct conflict with an assembly summoned by the Union. (Tr. 293, ln. 18-25; Tr. 294, ln. 1-4 Miguel Colón).

12. ALJD p. 16, ln. 5-6 The ALJ failed to find that, on October 12, Ángel Vázquez, an officer of Local 901, asked Shop Steward Miguel Colón not to divide membership by instigating members not to go to the Union's assembly, (Tr. 273, ln. 23-25; Tr. 274, ln. 15-17 Miguel Colón).

13. ALJD p. 16, ln. 7-8 The ALJ erred in finding that one of the Union's attorneys informed Shop Steward Miguel Colón that the only way to have the stewards reinstated was to engage in a strike. This finding is based on one of the Shop Steward's (Miguel Colón) self-serving testimony which should not have been given any credibility. José Carreras, the attorney to which Colón made reference in his testimony, was present during all the proceedings, was available to testify, and was not the

leading attorney for the Union in this case. However, José Carreras did not testify regarding his alleged conversation with Miguel Colón. (Tr. 289, In. 10-17 Miguel Colón).

14. ALJD p. 16, In. 17 The ALJ failed to find that the October 12 petition to the Union stated that the employees wanted “the solution of the collective bargaining agreement” through the Stewards. (General Counsel Exhibit 29(b)).
15. ALJD p. 16, In. 18 The ALJ failed to find that, on October 12, two assemblies were held, one summoned by the Union and one called by the five Shop Stewards. (Tr. 273, In. 19-22; Tr. 283, In. 3-16 Miguel Colón)
16. ALJD p. 16, In. 18 The ALJ failed to find that no Union officer was present at the October 12 assembly called by the five Shop Stewards. (Tr. 253, In. 17-19 Miguel Colón).
17. ALJD p. 16, In. 22 The ALJ failed to find that, during the October 13 meeting, CCPRB informed its employees that it was willing to resume collective bargaining agreement negotiations, upon the Union’s request. (Tr. 322, In. 3-7 Héctor Sánchez).
18. ALJD p. 16, In. 22 The ALJ failed to find that, on October 15, the Union formally requested that CCPRB resume negotiations

and CCPRB promptly acquiesced. (Joint Exhibits 16 and 17)

19. ALJD p. 16, ln. 25 The ALJ failed to find that, by October 16, CCPRB's employees knew that CCPRB and the Union were about to resume negotiations. (Tr. 957, ln. 18-25; Tr. 958, ln. 1-22, Marlyn Cruz; Joint Exhibits 16 and 17).
20. ALJD p. 16, ln. 28 The ALJ failed to find that no Union officer was present at the October 19 meeting held at Miguel Colón's house. (Tr. 430, ln. 7-8 Carlos Rivera).
21. ALJD p. 16, ln. 28 The ALJ failed to find that the employees decided to implement the strike at the October 19 meeting without consulting the Union. The record shows that the Five Shop Stewards did not receive reply from the Union regarding the petition they faxed on October 14, nor did they try to elicit a response from the Union before striking. (GC Exhibit 29(b); Tr. 257, ln. 1-4 Miguel Colón; Tr. 429, ln. 20-25; Tr. 430, ln. 1-2 Carlos Rivera).
22. ALJD p. 18, ln. 25-28 The ALJ erred in finding that the October 20-22 strike was called to protest the suspension and discharge of the five Shop Stewards, and to reconvene the parties' successor collective bargaining negotiations that had ceased on September 9. The evidence on the record shows that the October 20-22 strike was called to

undermine the exclusive bargaining representative and force CCPRB to bargain directly with the five Shop Stewards. (Entire Transcript).

23. ALJD p. 18, ln. 28-29 The ALJ erred in finding that the employees' October 20-22 protest was an unfair labor practice strike. The record clearly demonstrates that the October 20-22 strike was in derogation of the Union's position; hence, making it an illegal strike, not protected under the Act. (Entire Transcript).

24. ALJD p. 18, ln. 31-37 The ALJ erred in finding that a majority of the bargaining unit employees unanimously voted to authorize a strike unless the Employer immediately reinstated the five suspended Shop Stewards, reconvened collective-bargaining negotiations and agreed not to file unfair labor practice charges against the Union. The evidence on the record clearly shows that a strike vote would only be authorized if CCPRB did not agree to one of three issues discussed in the September 15 assembly. (Tr. 136, ln. 19-25; Tr. 137, ln. 1 José Adrián López; Tr. 248, ln. 22-25; Tr. 249, ln. 1-4 Miguel Colón).

25. ALJD p. 18, ln. 37-39 The ALJ erred in implicitly finding that the Union's request for approval of strike benefit assistance to Teamster Headquarters in Washington DC was done

in preparation for the October 20-22 strike. The evidence on the record establishes that the request for approval of strike benefit assistance was done because of a stalemate in the negotiation of the economic articles of the successor CBA. The petition did not even mention the suspension of the five Shop Stewards. (CP-24-CB-2706 Exhibit 1).

26. ALJD p. 19, ln. 22 The ALJ failed to find and conclude that the Shop Stewards acted as a labor organization, as defined by the Act, in detriment of the exclusive bargaining representative's position. (Entire Transcript)

27. ALJD p. 19, ln. 24-25 The ALJ erred in concluding that the Employer's actions in suspending four and terminating 34 employees for their participation in the October 20-22 strike violated Section 8(a)(1) and (3) of the Act. The record shows that the October 20-22 strike was not protected under the Act; hence, the General Counsel did not establish a prima facie case of discrimination. (Entire Transcript).

28. ALJD p. 19, ln. 39-41 The ALJ erred by finding that the employer did not submit any evidence that Miguel Colón or any other bargaining unit employee requested CCPRB to negotiate with them. The evidence on the record clearly demonstrates that the Shop Stewards

requested that CCPRB negotiate with them. (Tr. 419, In. 8-13, Tr. 420, In. 1-8 Carlos Rivera; Tr. 280, In. 7-21 Miguel Colón; Tr. 307, In. 18-21 Héctor Sánchez)

29. ALJD p. 25, In. 27-28 The ALJ erred in finding that the terms of the “last chance agreement” were overly broad and unlawful under the Act. The evidence on the record shows that the “last chance agreement” was valid because it was limited and directly related to the suspension that occurred as a result of the October 20-22 strike. (Joint Exhibit 7; Entire Transcript)

30. ALJD p. 26, In. 6-10 The ALJ erred in finding that CCPRB coerced its employees into signing a “last chance agreement” that conditioned their reinstatement from their suspension on their relinquishment of their right to file unfair labor practice charges or give testimony to the Board. The evidence on the record shows that the “last chance agreement” was valid because it was limited and directly related to the suspension that occurred as a result of the October 20-22 strike. (Joint Exhibit 7; Entire Transcript)

31. ALJD p. 26, In. 11-14 The ALJ erred in concluding that CCPRB violated Section 8(a)(1) and (4) of the Act by discharging employees Luis Bermúdez, José Rivera-Barreto, Virginio Correa, and Luis Meléndez, since the

execution of the last chance agreement preceded the four employees' termination. The record demonstrates that CCPRB did not commit any violation of the Act. (Joint Exhibit 7;Entire Transcript)

32. ALJD p. 26, fn. 41

The ALJ erred in finding that CCPRB violated Section 8(a)(1) and (3) of the Act "because the discharges were directly related to the four employees' participation in the unfair labor practice strike, and but for that action, the employees would not have executed the last chance agreement". The evidence on the record does not establish any causal connection between the October 20-22 strike and the four employees' discharge. (Joint Exhibit 7;Entire Transcript)

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 14th day of June, 2010.

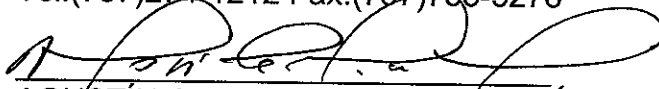
PIETRANTONI MENDEZ & ALVAREZ, LLP

Banco Popular Center, Suite 1901

Avenida Muñoz Rivera 209

San Juan, Puerto Rico 00918

Tel.(787)274-1212 Fax.(787)753-5278



AGUSTÍN COLLAZO-MOJICA
acollazo@pmalaw.com



CARLOS CONCEPCIÓN-CASTRO
cconcepcion@pmalaw.com

CERTIFICATE OF SERVICE

We hereby certify that on this same date a true copy of this document was served upon the following:

BY MAIL:

Marta M. Figueroa
Regional Director
National Labor Relations Board, Region 24
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Ave.
San Juan, PR 00918

National Labor Relations Board
Attention: Division of Judges
1099 14th Street, NW
Washington, DC 20570-0001

BY E-MAIL:

Ana Beatriz Ramos Fernández
Isis Ramos-Melendez
Counsel for the General Counsel
National Labor Relations Board, Region 24
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Ave.
San Juan, PR 00918
Email: Ana.Ramos@nrlrb.gov
Isis.Ramos-Melendez@nrlrb.gov

José Adrián López Pacheco
PMB 439
PO Box 10000
Canóvanas, PR 00729
Email: joseadrianlopez@yahoo.com

Miguel A. Colón Torres
Matón Arriba
HC-44, Box 12672
Cayey, PR 00736
Email: miguelillo2353@yahoo.com

Julián J. González, Esq.
428 Stratford Rd. #4D

Exceptions to the ALJ's Decision
24-CA-11018, et als.

Brooklyn, NY 11218
Email: julian.j.gonzalez@gmail.com

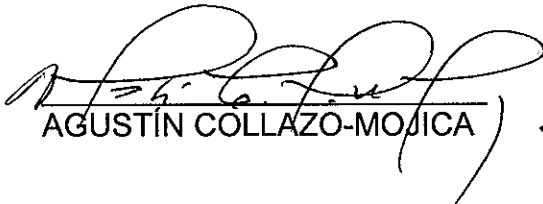
Linda Backiel, Esq.
Calle Mayagüez #70
Oficina 2B
Hato Rey, PR 00918
Email: lbackielr@gmail.com

Barbara Harvey, Esq
1394 East Jefferson Ave.
Detroit, MI 48207
Email: blmharvey@sbcglobal.net

Antonio Santos, Esq.
Urb. Paseo Mayor
8th Street, C-21
San Juan, PR 00926
Email: antoniosantos00926@yahoo.com

Miguel Maza, Esq.
Yolanda Da Silveira, Esq.
Vanessa Marzán-Hernández, Esq.
Maza & Green
Bolivia #33, Suite 203
Hato Rey, PR 00917
Email: ydasilveira@maza.net
vanessa.marzan@gmail.com

Dated at San Juan, Puerto Rico this 14th day of June, 2010.


AGUSTÍN COLLAZO-MOJICA


CARLOS CONCEPCIÓN-CASTRO